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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,252	11/26/2003	Brian C. Demsky	MIS-00401	6061
7590	06/29/2006		EXAMINER	
MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY SUITE 1001 WESTBOROUGH, MA 01581			BONZO, BRYCE P	
			ART UNIT	PAPER NUMBER
			2113	

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/723,252	DEMSKY ET AL.
	Examiner	Art Unit
	Bryce P. Bonzo	2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 May 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-75 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-21,25,29-59,63 and 67-75 is/are allowed.  
 6) Claim(s) 22-24,26-28,60-62 and 64-66 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

### **Non-Final Official Action**

#### ***Status of the Claims***

Claims 1-21, 25, 29-59, 63 and 67-75 are allowed.

Claims 22-24, 26-28, 60-62 and 64-66 are rejected under 35 USC §102.

#### ***Rejections under 35 USC §102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22-24, 26-28, 60-62 and 64-66 are rejected under 35 U.S.C. 102(e) as being anticipated by Applin (United States Patent Application Publication US 2004/0015876 A1).

As per the claims, Applin discloses:

22. A method of dynamically repairing an inconsistent data structure during program execution comprising:

receiving at least one inconsistency violation (page 2, ¶15);

selecting a repair to correct said at least one inconsistency violation (page 2, ¶16); and

repairing said inconsistent data structure (page 2, ¶16: recovery state), said repairing including modifying at least a portion of said inconsistent data structure (page 2, ¶15: providing a default Value).

23. The method of claim 22, further comprising: resuming execution of said program (page 2, ¶16: continue with reduced functionality).

24. The method of claim 22, further comprising: performing said repair and satisfying said consistency constraint (page 2, ¶16: waiting for user to repair).

26. The method of claim 22, further comprising: repairing said inconsistent data structure in accordance with an internal consistency constraint (page 2, ¶16: waiting for user to repair).

27. The method of claim 22, further comprising: selecting a repair from a plurality of repairs in accordance with a cost associated with each repair (page 2, ¶16: waiting for user repair or automatically switching to recovery mode: the cost has been evaluated in time).

28. The method of claim 27, wherein said cost is user specified (page 2, ¶16: the user programs the program to carry out one option or the other).

Claims 60-62 and 64-66 are the computer program product embodiments of the method of dynamic repair as disclosed in claims 22-24 and 26-28. As such the claims 60-62 and 64-66 rejected on the same portions of Applin and the supporting paragraphs providing the programming structure.

***Allowed Claims***

Claims 1-21, 25, 29-59, 63 and 67-75 are allowed.

In view of the Amendment of 5/26/06, additional claims have been allowed.

***Response to Applicant's Arguments***

The Examiner has reviewed the arguments presented by Applicant, and has found the portions persuasive in combination with amendments to the claims. The remaining claims are again rejected as the Examiner finds the arguments unpersuasive.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryce P. Bonzo whose telephone number is (571)272-3655. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Bryce P. Bonzo  
Primary Examiner  
Art Unit 2113